OMBUDSMAN OF BRITISH COLUMBIA

Special Report No. 9

to

The Legislative Assembly
of British Columbia

SUPREME COURT OF CANADA JUDGMENT

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Legislative Assembly
Province of British Columbia

OMBUDSMAN

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February 20, 1985

The Honourable K. Walter Davidson
M.L.A. for Delta
Speaker of the Legislative Assembly
Parliament Buildings
Victoria, British Columbia
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Mr. Speaker:

I have the honour to submit herewith a special report to the Legislative Assembly pursuant to section 30(2) of the Ombudsman Act, R.S.B.C. 1979, chapter 306.

The report intends to bring to the attention of the Legislative Assembly an important interpretation of the Ombudsman Act by the Supreme Court of Canada.

Respectfully yours,

Karl A. Friedmann
Ombudsman

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I. Report

A. Background to the Litigation

In a far-reaching decision the Supreme Court of Canada has upheld the right and duty of the Ombudsman to investigate the actions of the executive branch of government. The British Columbia Development Corporation had successfully argued before the Chief Justice of the Supreme Court of British Columbia in December 1981 that "individual transactions requiring the exercise of business judgment are not matters of administration...", and therefore a complaint made to me by King Neptune Seafoods Ltd. was outside my jurisdiction.

The Court of Appeal of British Columbia, in a majority decision, disagreed and confirmed my authority to investigate the complaint (that B.C.D.C. had negotiated in bad faith and had unreasonably refused to renew the complainant's restaurant lease). It was my position that the Ombudsman Act authorized me to investigate the complaint. (I reported to the Legislative Assembly the judgment rendered by the Court of Appeal in my Special Report No.6, July 27, 1982.)

Following the Court of Appeal decision the British Columbia Development Corporation applied to the Supreme Court of Canada for leave to appeal the judgment of the British Columbia Court of Appeal. Counsel for the British Columbia Development Corporation

stated that the issue transcended provincial boundaries because the language of the British Columbia statute is similar to that of eight other provinces of Canada, i.e. Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Nova Scotia, Newfoundland and Ontario. It should therefore be decided by the Supreme Court of Canada.

At this point the Attorney General of British Columbia decided to take a more active interest in the litigation. (The Attorney General had been notified of the court application, but had declined to take part in the initial hearing or in the appeal to the British Columbia Court of Appeal). At the Supreme Court of Canada the Attorney General supported the argument of the British Columbia Development Corporation for leave to appeal.

Leave to appeal to the Supreme Court of Canada was granted on September 22, 1982. Because the Court accepted the argument that the case had importance beyond British Columbia I informed the Ombudsmen in other provinces of the Court's decision and suggested that they might wish to intervene at the hearing of the appeal if they were concerned that the outcome of the case might affect the interpretation of their respective legislation. The Ombudsman of Ontario, the Ombudsman of Saskatchewan and the Public Protector of Quebec applied for and were granted intervenor status by the Supreme Court of Canada. The case was heard on January 30, 1984 before five members of the Supreme Court of Canada. Reasons for judgment were delivered on November 22, 1984. It was a unanimous judgment

rendered by the Honourable Mr. Justice Dickson (now Chief Justice of Canada). The appeal by B.C.D.C. was dismissed and my authority to investigate such complaints was upheld.

The full judgment is reproduced in this report for the information of Members of the Legislative Assembly.

B. "A Matter of Administration"

Section 10 of the Ombudsman Act authorizes the Ombudsman to investigate "with respect to a matter of administration" decisions, recommendations, acts, omissions and procedures of authorities that aggrieve or may aggrieve a person. At issue was the meaning of the phrase "a matter of administration". Should the words be interpreted to exclude "individual transactions requiring the exercise of business judgment"?

The Supreme Court of Canada took the opportunity to give a comprehensive interpretation of that phrase in the context of the entire legislative scheme.

Although individual excerpts cannot replace a full study of the judgment, the following quotations summarize the findings of the Court:

"There is nothing in the words administration or administrative which excludes the proprietary or business decisions of governmental organizations. On the contrary, the words are fully broad enough to encompass all conduct engaged in by a governmental authority in furtherance of governmental policy -- business or otherwise." (p.35)

"The touchstone of administrative action, according to the above definitions, is the government's adoption, formulation or application of general public policy in particular situations. There is no caveat that the policy in question be divorced from proprietary, commercial or business matters." (pp.36-37)

"In my view, the phrase 'a matter of administration' encompasses everything done by governmental authorities in the implementation of government policy. I would exclude only the activities of the legislature and the courts from the Ombudsman's scrutiny." (p.41)

The Supreme Court of Canada did not, however, confine itself to the more narrow issue of "business" matters. The Court considered the historical development of the Ombudsman concept, referred to various learned authors on the subject, and analyzed the broad legislative scheme that makes up the entirity of the Ombudsman's jurisdiction and role in our system of government. The following passages highlight the Court's reasoning.

"It is important to note that the Ombudsman has no power directly to force any governmental authority to remedy a wrong he uncovers. The Act does, however, create a variety of mechanisms whereby the Ombudsman may move the government to implement any decision he reaches after an investigation. He may recommend corrective action to any authority who must then notify him of what action will be taken, if any, and where no action is planned the reasons why (s. 23). If the Ombudsman remains unsatisfied, he may report the matter to the Lieutenant Governor in Council and to the Legislative Assembly (s. 24). And he may comment publicly on any case where he deems it appropriate (s. 30)."

"It is these sections that ultimately give persuasive force to the Ombudsman's conclusions: they create the possibility of dialogue between governmental authorities and the Ombudsman; they facilitate legislative oversight of the workings of various government departments and other subordinate bodies; and they allow the Ombudsman to marshal public opinion behind appropriate causes."

"Read as a whole, the Ombudsman Act of British Columbia provides an efficient procedure through which complaints may be investigated, bureaucratic errors and abuses brought to light and corrective action initiated. It represents the paradigm of remedial legislation. It should therefore receive a broad,

purposive interpretation consistent with the unique role the Ombudsman is intended to fulfil." (pp.21-23)

C. An Aggrieved Person

The Attorney General raised two additional arguments before the Supreme Court of Canada. The first was that a complainant cannot be aggrieved or potentially aggrieved if his legal rights were not infringed. He argued secondly that corporations such as King Neptune Seafoods Ltd. were not "persons" as that term is used in the Ombudsman Act. Both arguments were rejected in the judgment of the Supreme Court of Canada.

With respect to the first argument that King Neptune Seafoods Ltd. was not aggrieved or potentially aggrieved because its legal rights were not infringed, the court held:

"...the appellants offer no principled justification for limiting the meaning of "aggrieves" to the infringement of a legal right. The absence of such justification is not surprising since it was, at least in part, the lack of any remedy at law for many administrative injustices that gave rise to the creation of the office of Ombudsman. The courts, not Ombudsmen, have responsibility for remedying violations of legal rights. ... To interpret the phrase 'aggrieves or may aggrieve'

in the manner urged by the appellants would run counter to the legislature's clear intention to provide redress for grievances not legally cognizable."

"I would hold that a party is aggrieved or may be aggrieved whenever he genuinely suffers, or is seriously threatened with, any form of harm prejudicial to his interests, whether or not a legal right is called into question." (pp. 33-34)

The second argument addressed by the Court was that the complainant, King Neptune Seafoods Ltd., was not eligible as a complainant under the Ombudsman Act because a corporation is not a person, as that term is used in the Ombudsman Act.

The Supreme Court of Canada concluded that the Interpretation Act provides that the word "person" includes a corporation.

"There is nothing in the Ombudsman Act inconsistent with this provision.

"Moreover, as a matter of policy, there is no reason to opt for the narrower meaning. Corporations, after all, are merely the vehicles through which natural persons pursue economic goals. When a corporation is treated unfairly or denied something to which it has a right, the effects are felt by people. Denying standing to corporations would result in some injustices to

people going unexamined and possibly unredressed, whether those people are shareholders or, as here, long term employees who stood to lose their jobs if King Neptune's restaurant closed." (pp. 29-30)

D. Conclusion

The conclusion of the litigation has now allowed me to start the investigation of King Neptune's complaint. B.C.D.C. has immediately and fully complied with the judgment. I will be reporting my findings to the complainant and to B.C.D.C. in the near future.

Beyond settling this individual jurisdictional dispute I expect the judgment of the Supreme Court of Canada will provide excellent guidance to me as Ombudsman and to the authorities that are subject to my investigation.

I gratefully acknowledge the sound advice and support of the intervening Ombudsmen from Ontario, Quebec and Saskatchewan. Other provincial Ombudsmen also supported our research and our case. Many Ombudsmen in other common law countries have already expressed their expectation that this judgment will be of great use and importance in their respective jurisdictions.

II. Judgment of the Supreme Court of Canada

Supreme Court of Canada

BRITISH COLUMBIA DEVELOPMENT CORPORATION and THE FIRST CAPITAL CITY DEVELOPMENT COMPANY LIMITED

- and -

KARL A. FRIEDMANN, OMBUDSMAN

-and-

THE ATTORNEY GENERAL FOR THE PROVINCE OF BRITISH COLUMBIA

-and-

THE OMBUDSMAN OF ONTARIO
THE PUBLIC PROTECTOR OF QUEBEC
THE OMBUDSMAN OF SASKATCHEWAN

CORAM:

The Hon. Mr. Justice Ritchie
The Hon. Mr. Justice Dickson
The Hon. Mr. Justice Estey
The Hon. Mr. Justice McIntyre
The Hon. Mme Justice Wilson

Appeal Heard
January 30, 1984

Judgment rendered
November 22, 1984

Reasons for judgment by

The Hon. Mr. Justice Dickson

Concurred in by

The Hon. Mr. Justice Ritchie
The Hon. Mr. Justice Estey
The Hon. Mr. Justice McIntyre
The Hon. Mme Justice Wilson

Counsel at hearing

For the appellants
Mr. Jack Giles, Q.C.
Mr. J.A. Angus

For the Attorney General of British Columbia
Mr. E. Robert A. Edwards, QC

Cour suprême du Canada

BRITISH COLUMBIA DEVELOPMENT CORPORATION and THE FIRST CAPITAL CITY DEVELOPMENT COMPANY LIMITED

- et -

KARL A. FRIEDMANN, OMBUDSMAN

- et -

LE PROCUREUR GENERAL DE LA PROVINCE DE LA COLOMBIE-BRITANNIQUE

-et-

OMBUDSMAN DE L'ONTARIO
PROTECTEUR DU CITOYENS DU QUEBEC
OMBUDSMAN DE LA SASKATCHEWAN

CORAM:

L'honorable juge Ritchie
L'honorable juge Dickson
L'honorable juge Estey
L'honorable juge McIntyre
L'honorable juge Wilson

Appel entendu
le 30 janvier 1984

Jugement rendu
le 22 novembre 1984

Motifs de jugement par

L'honorable juge Dickson

Souscrivent à l'avis de
l'honorable juge Dickson

L'honorable juge Ritchie
L'honorable juge Estey
L'honorable juge McIntyre
L'honorable juge Wilson

Avocats à l'audience

Pour les appelants
Me Jack Giles, c.r.
Me J.A. Angus

Pour le Procureur général
de la Colombie-Britannique
Me E. Robert A. Edwards, cr

For the respondent
Mr. I.G. Nathanson
Mr. P.S. Borowicz

For the Ombudsman of Ontario
Mr. Eric R. Murray, QC
Mr. Ian A. Blue

For the Public Protector of Quebec
Mr. François Aquin
Mr. Siri Genik

For the Ombudsman of Saskatchewan
Mr. Noel S. Sandomirsky

Pour l'intimé
Me I.G. Nathanson
Me P.S. Borowicz

Pour l'Ombudsman de l'Ontario
Me Eric R. Murray, cr
Me Ian A. Blue

Pour le Protecteur du Citoyen du Québec
Me François Aquin
Me Siri Genik

Pour l'Ombudsman de la Saskatchewan
Me Noel S. Sandomirsky

b.c. development corp. v. friedmann (ombudsman)

British Columbia Development Corporation and The First Capital City Development Company Limited — Appellants;

and

Karl A. Friedmann, Ombudsman — Respondent;

and

The Attorney General for the Province of British Columbia — Mis en cause;

and

Ombudsman of Ontario, Public Protector for the Province of Quebec and Ombudsman of Saskatchewan — Interveners.

File No.: 17213.

1984: January 30; 1984: November 22.

Present: Ritchie, Dickson, Estey, McIntyre and Wilson JJ.

on appeal from the court of appeal for british columbia

Administrative law -- Ombudsman -- Jurisdiction -- Crown corporation responsible for urban redevelopment project -- Agreement as to restaurant's participation in scheme not reached -- Restaurant's lease not renewed -- Whether or not Crown corporation's refusal to renew lease within scope of Ombudsman's power to investigate -- Ombudsman Act, R.S.B.C. 1979, c. 306, s. 10(1), 12(3), Schedule s. 2 -- Development Corporation Act, R.S.B.C. 1979, c. 93, ss. 4, 4.1, 5.

British Columbia Development Corporation (B.C.D.C.), a crown corporation, incorporated First Capital City Development Co. (First Capital) to carry out an urban redevelopment project. B.C.D.C. purchased some waterfront property for the project on First Capital's behalf. The property in question was subject to a lease held by King Neptune Seafoods Ltd. (King Neptune) and due to expire in a few months. King Neptune had operated a restaurant on the property for several years and wished to continue doing so. B.C.D.C., however, planned to build a hotel where King Neptune's restaurant stood. B.C.D.C., First Capital and King Neptune entered into negotiations concerning King Neptune's participation in the redevelopment scheme. No agreement, however, was reached. Ultimately, B.C.D.C. refused to renew King Neptune's lease. The Ombudsman, acting on a complaint from King Neptune that B.C.D.C. and First Capital had dealt with it unfairly, commenced an

investigation. The investigation was stayed, however, by an interlocutory injunction and the British Columbia Supreme Court found, on an application for judicial review, that B.C.D.C.'s dealings with King Neptune could not be characterized as involving "a matter of administration" within the meaning of that term in the jurisdictional provision of the Ombudsman Act. Those dealings were therefore beyond the Ombudsman's jurisdiction. The Court of Appeal reversed that decision.

Held: The appeal should be dismissed.

Section 10(1) of the Ombudsman Act provides that the Ombudsman may conduct an investigation into any complaint presenting: 1) a decision or recommendation made; an act done or omitted; or a procedure used; 2) by an authority; 3) that aggrieves or may aggrieve a person; 4) with respect to a matter of administration.

The business dealings which B.C.D.C. and First Capital had with King Neptune met these conditions. The complaint was in substance one of bad faith on the part of B.C.D.C. and First Capital in negotiating with King Neptune. This called into question conduct properly described as an act done or omitted, a decision or a procedure used. B.C.D.C. was clearly an "authority" as described in the Schedule to the Act, and King Neptune was

an "aggrieved person". The word "person" includes corporations and a person is "aggrieved" whenever he genuinely suffers, or is threatened with, any form of harm prejudicial to his interests, whether or not a legal right is called into question. It is clear that the loss of the restaurant's waterfront location could cause harm prejudicial to the interests of King Neptune. Finally, B.C.D.C.'s conduct was "with respect to a matter of administration" as that term is used in s. 10(1) of the Act. The touchstone of administrative action is the government's adoption, formulation or application of general public policy in particular situations. The phrase "a matter of administration" encompasses everything done by governmental authorities in the implementation of government policy, regardless of whether the implementation of those policies involves matters of proprietary, commercial or business concern. Only the activities of the legislature and the courts are excluded from the Ombudsman's scrutiny. B.C.D.C. and First Capital, in dealing with the land in question, were implementing governmental policy and administering a governmental program. It follows that King Neptune's complaints about the manner in which B.C.D.C. and First Capital dealt with it regarding the land and the location of the restaurant were, in spite of their commercial flavour, "with respect to a matter of administration".

Re Ombudsman Act (1970), 72 W.W.R. 176; Re Ombudsman of Ontario and Health Disciplines Board of Ontario (1979), 104 D.L.R. (3d) 597; Re Ombudsman of Ontario and Minister of Housing of Ontario (1979), 26 O.R. (2d) 434; Re Ombudsman for Saskatchewan (1974), 46 D.L.R. (3d) 452; Re Board of Police Commissioners for the City of Saskatoon and Tickell (1979), 95 D.L.R. (3d) 473; Booth v. Dillon (No. 3), [1977] V.R. 143; Glenister v. Dillon, [1976] V.R. 550; Ombudsman of Nova Scotia v. Sydney Steel Corp. (1977), 17 N.S.R. (2d) 361, referred to; Ex parte Sidebotham, In re Sidebotham (1880), 14 Ch.D. 458; Re Yulka and Minister of Social Services (1982), 138 D.L.R. (3d) 574; Arsenal Football Club Ltd. v. Smith, [1977] 2 W.L.R. 974; Re Actus Management Ltd. and City of Calgary (1975), 62 D.L.R. (3d) 421; W.A.W. Holdings Ltd. v. Summer Village of Sundance Beach, [1980] 1 W.W.R. 97; Attorney-General of the Gambia v. N'Jie, [1961] 2 All E.R. 504, distinguished.

APPEAL from a judgment of the British Columbia Court of Appeal, [1982] 5 W.W.R. 563, 139 D.L.R. (3d) 307, 38 B.C.L.R. 56, allowing an appeal from a judgment of the British Columbia Supreme Court. Appeal dismissed.

Jack Giles, Q.C., and J.A. Angus, for the appellants.

I.G. Nathanson and F.S. Borowicz, for the respondent.

E. Robert A. Edwards, Q.C., for the mis en cause the Attorney General of British Columbia.

Eric R. Murray, Q.C., and Ian A. Blue, for the intervener the Ombudsman for the Province of Ontario.

François Aquin and Siri Genik, for the intervener Yves Labonté, Public Protector for the Province of Quebec.

Noel S. Sandomirsky, for the intervener David Tickell, Ombudsman of Saskatchewan.

The judgment of the Court was delivered by

SUPREME COURT OF CANADA

BRITISH COLUMBIA DEVELOPMENT CORPORATION
and THE FIRST CAPITAL CITY DEVELOPMENT
COMPANY LIMITED

-and-

KARL A. FRIEDMANN, OMBUDSMAN

-and-

THE ATTORNEY GENERAL FOR THE
PROVINCE OF BRITISH COLUMBIA

-and-

OMBUDSMAN OF ONTARIO
PUBLIC PROTECTOR FOR THE PROVINCE OF QUEBEC
OMBUDSMAN OF SASKATCHEWAN

CORAM: Ritchie, Dickson, Estey, McIntyre and Wilson JJ.

DICKSON J.:

This Court is asked in this appeal to determine the scope of the investigatory jurisdiction granted the Ombudsman of British Columbia under s.10(1) of the Ombudsman Act, R.S.B.C. 1979, c.306, which reads:

> 10(1) The Ombudsman, with respect to a matter of administration, on a complaint or on his own initiative, may investigate
>
> (a) a decision or recommendation made;
>
> (b) an act done or omitted; or
>
> (c) a procedure used
>
> by an authority that aggrieves or may aggrieve a person.

The Ombudsman (in original form "jusitieombudsman", a Swedish word meaning "Procurator for Civil Affairs", but translated loosely as "citizens' defender") is an office typically provided for by a legislative body and headed by an independent public official with power to receive complaints about, inquire into, and report upon, governmental abuses affecting members of the public. Any analysis of the proper investigatory role the Ombudsman is to fulfil must be animated by an awareness of this broad remedial purpose for which the office has traditionally been created.

At the same time it must be emphasized that the Ombudsman is a statutory creation. It is elemental that the nature and extent of the jurisdiction which may be exercised by the Ombudsman in this case turns upon the interpretation to be given the specific language of the British Columbia legislation.

This appeal may affect Canadian jurisdictions beyond British Columbia. All provinces, except Prince Edward Island, have Ombudsman Acts not unlike the British Columbia Act. The Ombudsmen of Ontario, Quebec and Saskatchewan have intervened in the present appeal to support the Ombudsman of British Columbia. The pro-

vincial Attorney General has intervened to support British Columbia Development Corporation (hereafter "B.C.D.C."), one of the appellants.

I Background and Facts

The appellants, B.C.D.C. and its wholly owned subsidiary, First Capital City Development Company Limited (hereafter "First Capital"), dispute the right of Karl A. Friedmann, the British Columbia Ombudsman, to investigate complaints made against them by King Neptune Seafoods Limited (hereafter "King Neptune").

B.C.D.C. is a Crown corporation, all the issued shares of which are owned by Her Majesty in the Right of the Province of British Columbia. The corporation was created by the Development Corporation Act, S.B.C. 1973, c.27 and continued pursuant to the Development Corporation Act, R.S.B.C. 1979, c.93. The directors of B.C.D.C. are appointed by the Lieutenant Governor in Council. B.C.D.C.'s mandate is to create and pursue opportunities for the economic development of the province. Its objects are set out in s.4 of the latter Act:

> The object of the corporation is to create, develop and increase income, employment, tax revenue and other economic benefits to the Province by en-

couraging and assisting in the establishment, expansion and continued operation of industrial enterprises in the Province, and, for that purpose,

(a) to provide financing by way of loans to, or purchase of shares of, an industrial enterprise, on terms and conditions as the corporation considers advisable;

(b) to assist an industrial enterprise by disposing of industrial sites, land, buildings or equipment to that industrial enterprise on terms and conditions as the corporation considers advisable; and

(c) to provide other financial and technical assistance to an industrial enterprise as may assist the industrial enterprise in carrying out the objects of this Act.

This Act was amended by S.B.C. 1980, c.35 to grant B.C.D.C. further objects:

4.1 The further objects of the corporation are to act as agent for, and provide assistance to, the government in the administration or implementation of government programs.

Pursuant to s.5 of the Act, B.C.D.C. has been granted all the powers necessary to carry out its objects. These powers allow it to function much like a private company and to implement the government's economic policies in the private sector.

In the mid-1970's, pursuant to its mandate, B.C.D.C. became involved in a major waterfront redeve-

lopment project in the City of New Westminster. On August 2, 1977, First Capital was incorporated to assume primary responsibility for the direction and management of the project. First Capital and the City of New Westminster entered into a development agreement formalizing the terms under which those two bodies would participate in the redevelopment project. This agreement was authorized by the provincial legislature (New Westminster Redevelopment Act 1979, S.B.C. 1979, c.36) and approved by the Minister of Municipal Affairs.

King Neptune had operated a popular waterfront restaurant for many years in New Westminster. The restaurant was located on land leased from Pacific Coast Terminals Ltd. (hereafter "Pacific Terminals"). This land was within the planned redevelopment area and was purchased on behalf of First Capital by B.C.D.C. from Pacific Terminals in 1978. King Neptune's lease was due to expire on December 31, 1981. B.C.D.C. informed King Neptune that the land would be required for the redevelopment project upon expiry of the lease. King Neptune, however, wanted to continue operating at the original location, and to expand its restaurant on

adjacent land. Discussions ensued between King Neptune on the one hand, and B.C.D.C. and the City of New Westminster, on the other. It appears that B.C.D.C. intended to build a hotel where King Neptune's restaurant was located. It did express a willingness to include King Neptune's restaurant somewhere in the redevelopment plan.

As events progressed, B.C.D.C. recognized that its negotiations with King Neptune had given rise to a moral obligation on its part to take the restaurant's interests into account in planning the redevelopment scheme. In a letter to a prospective investor dated April 13, 1978, B.C.D.C. wrote:

> I note that in your letter to the GVRD of March 6, 1978 that your principal interest may be in the restaurant, rather than the hotel. In order to avoid misleading your interest, we hope to have conveyed to you information regarding the type of hotel we wish to attract and that the restaurant operation would be ancillary to the hotel operation. Further, the area of the proposed hotel is currently occupied by the City's most significant restaurant, the King Neptune. Indeed, the King Neptune might be described as one of the community's institutions. Based upon prior negotiations with ourselves and the City of New Westminster I would indicate that there is a moral obligation to the owners of the King Neptune with respect to their future expansion plans.

A copy of this letter was sent to King Neptune.

On February 15, 1979, B.C.D.C. also wrote King Neptune to confirm its willingness to include the restaurant in the redevelopment project. This letter read in part:

> As I mentioned to you, we have endeavoured to recognize the stature your restaurant enjoys in the community and the role it has played over the past thirty-five years. By offering you early participation in our project your involvement might take the form of an ownership arrangement, a land lease, or the lease of a building shell developed to your specification by others. At this particular stage of our activities your requirements could be fitted into our planning so that your restaurant premises would form an integral part of the scheme as, I think, we have both visualized. Unfortunately, time is running out and we have now entered a more formalized planning and marketing phase of activity.

While there were further negotiations, an agreement ensuring participation of King Neptune in the redevelopment scheme was never reached.

On July 14, 1981 - less than six months before expiry of the lease - King Neptune wrote a letter of complaint to the Ombudsman requesting an investigation. The letter reads in part:

> We feel that there is, if not a legal obligation, then definitely an expressed moral obligation to our future expansion plans which has not been fulfilled by F.C.C. and it's [sic] parent organization B.C.D.C. These expansion plans were

> being finalized with the City of New Westminster at the same time the city was corroborating [sic] with B.C.D.C. to form F.C.C.
>
> A false sense of security was established for King Neptune by F.C.C. which now has deteriorated to non existance [sic].
>
> ...
>
> The best F.C.C. can offer is our expenditure of one and a half million dollars to relocate plus an interim closing period of approximately two years. We feel this is unacceptable when the original negotiations were for the remaining of our present structure [sic] and our construction of an additional restaurant of an indian [sic] longhouse design on the adjacent property.
>
> ...

This first letter impugned the conduct of B.C.D.C. and First Capital. When the Ombudsman commenced his investigation, however, he chose to focus upon First Capital. On August 27, 1981, the Ombudsman wrote the Chairman of First Capital (who was also the Chairman of B.C.D.C.) that he had received a complaint against First Capital from King Neptune. In the letter, he stated the complaint alleged First Capital had "negotiated in bad faith with [King Neptune] for the lease and/or purchase of property on the New Westminster waterfront".

B.C.D.C. responded by challenging the Ombudsman's jurisdiction to investigate the complaint against First

Capital. After a protracted correspondence with B.C.D.C., the Ombudsman chose to secure from King Neptune a second written complaint dated November 12, 1981. This complaint was in terms similar to the first; it was directed, however, exclusively against B.C.D.C.

Upon receiving the second complaint, the Ombudsman informed the Chairman of B.C.D.C., by hand-delivered letter, that his office was now investigating a complaint from King Neptune alleging that B.C.D.C. had unreasonably refused to renew King Neptune's lease or sell the restaurant property to it. The letter directed B.C.D.C. to produce all documents in its possession relating to King Neptune's complaint.

The next day, two investigators from the Ombudsman's office went to B.C.D.C.'s offices to receive the documents. B.C.D.C. refused to produce them. A Mr. McLean, a vice-president of B.C.D.C., was served with a "Direction to Produce Documents". He was told that if the requested documents were not delivered to the Ombudsman's office the following Monday, he could be charged with an offence under the Ombudsman Act.

B.C.D.C. delivered the documents in a sealed packet the following Monday. The same morning B.C.D.C. and First Capital jointly filed a petition for judicial review in the British Columbia Supreme Court seeking (1) an order quashing the Direction to Produce Documents; (2) a declaration that the Ombudsman was without jurisdiction to investigate the complaints made by King Neptune against B.C.D.C. and First Capital; and (3) an interim injunction prohibiting the Ombudsman from examining the documents pending the determination of the merits of the petition. Upon an ex parte application brought by the petitioners that morning, Esson J. granted an order prohibiting the Ombudsman from making any use of the documents pendente lite.

II Judgments of the Courts of British Columbia

(a) British Columbia Supreme Court

The petition was heard before McEachern C.J.S.C., who held that King Neptune's complaint fell outside the jurisdiction conferred upon the Ombudsman by the Act. For the purposes of resolving the petition, the Chief Justice drew no distinction between B.C.D.C. and First Capital; he referred to the two corporations collectively as B.C.D.C. It was admitted that B.C.D.C. was an

"authority" within the meaning of the Act. The only point of real contention was whether the conduct which the Ombudsman proposed to investigate was "with respect to a matter of administration".

Chief Justice McEachern decided it was not. He reasoned that the inclusion of the qualifying words "a matter of administration" in the jurisdictional provision of the Ombudsman Act implied some limitation on the power of the Ombudsman. In his opinion, the term administrative could be interpreted as limiting the Ombudsman's jurisdiction in either of two ways: (1) it could refer to the non-judicial adjudication of legal rights; or (2) it could describe the management procedures by which an organization (like B.C.D.C.) governs itself and carries out its functions.

The Chief Justice considered that B.C.D.C. was not discharging any type of adjudicative function because it was under no obligation to weigh conflicting or competing claims. The sole responsibility it bore was to decide how best to utilize its assets for the proper discharge of its mandate. The exercise of this sort of business judgment in an individual transaction was not

a management procedure of the type contemplated by the Legislature.

Thus, Chief Justice McEachern concluded that B.C.D.C.'s conduct could not be characterized as administration. In his reasons for judgment he stated: "individual transactions requiring the exercise of business judgment are not matters of administration, or with respect to a matter of administration". He granted the petition, quashed the Direction to Produce Documents and declared that the Ombudsman was acting without jurisdiction.

(b) British Columbia Court of Appeal

Anderson, J.A. (Craig J.A. concurring) allowed the appeal. It was again conceded that B.C.D.C. was an "authority". The appeal proceeded on the basis that no distinction was to be made between B.C.D.C. and First Capital.

The majority interpreted the phrase "a matter of administration" as relating to the implementation of government policy by the carrying out of the executive or management functions of government. They considered that "the decision and the conduct leading up to it clearly involved the exercise of a governmental power

relating to a matter of administration". Since the complaint alleged that B.C.D.C., in fulfilling its public function in accordance with the objectives prescribed by the Development Corporation Act, had acted unjustly and in bad faith, it followed that the Ombudsman had jurisdiction to investigate.

The argument that the words "a matter of administration" do not include "acts or decisions" made in the exercise of business judgment was rejected. In the view of the majority, the legislation was intended to enable the citizen to request that a complaint of unjust conduct on the part of the government be investigated by the Ombudsman; from this perspective, so long as the impugned conduct was with respect to a matter of administration, its characterization as a business decision was simply irrelevant.

McFarlane, J.A., dissenting, would have dismissed the appeal for the reasons given by Chief Justice McEachern.

III Issue

B.C.D.C. and First Capital now appeal with leave of this Court. The sole issue this case presents is whether the Ombudsman has jurisdiction under s.10(1) of

the Act to investigate King Neptune's complaint against B.C.D.C. and First Capital. No question of the merits of the complaint is raised.

IV The Ombudsman's Jurisdiction

(a) General

As I have noted, the Ombudsman is a creature of statute. As such, his power to investigate complaints depends upon the meaning to be given the language the Legislature has used to define the ambit of his jurisdiction. Section 8 of the Interpretation Act, R.S.B.C. 1979, c.206 provides a guideline for the interpretation of provincial legislation like the Ombudsman Act. It states:

> 8. Every enactment shall be construed as being remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.

I do not think the remedial nature of the Ombudsman Act could fairly be doubted. The objects of the legislation and the degree to which it should receive a large and liberal interpretation can best be understood by examining the scheme of the statute as well as the factors that have motivated the creation of the Ombudsman's office.

(b) Historical Development

The need for some means of control over the machinery of government is nearly as old as government itself. The Romans, as long ago as 200 B.C., established a Tribune -- an official appointed to protect the interests and rights of the plebians from the patricians. They also had two Censors -- magistrates elected approximately every five years to review the performance of officials and entertain complaints from the citizenry. And the dynastic Chinese had the Control Yuan, an official who supervised other officials and handled complaints about maladministration.

The office of the Ombudsman and the concept of a grievance procedure which would be neither legal nor political in a strict sense are of Swedish origin, circa 1809. The constitution which established Sweden as a democractic monarchy, and created the Swedish Parliament, also provided for parliamentary oversight of the bureaucratic machinery through a new official called the Justitieombudsman.

As originally conceived, the Swedish Ombudsman was to be Parliament's overseer of the administration, but over time the character of the institution gradually

changed. Eventually, the Ombudsman's main function came to be the investigation of complaints of maladministration on behalf of aggrieved citizens and the recommendation of corrective action to the governmental official or department involved.

The institution of Ombudsman has grown since its creation. It has been adopted in many jurisdictions around the world in response to what R. Gregory and P. Hutchesson in The Parliamentary Ombudsman (1975) refer to as "one of the dilemmas of our times" namely, that "[i]n the modern state ... democratic action is possible only through the instrumentality of bureaucratic organization; yet bureaucratic power - if it is not properly controlled - is itself destructive of democracy and its values" (p.15).

The factors which have led to the rise of the institution of Ombudsman are well-known. Within the last generation or two the size and complexity of government has increased immeasurably, in both qualitative and quantitative terms. Since the emergence of the modern welfare state the intrusion of government into the lives and livelihood of individuals has increased exponentially. Government now provides services and

benefits, intervenes actively in the marketplace, and engages in proprietary functions that fifty years ago would have been unthinkable.

As a side effect of these changes, and the profusion of boards, agencies and public corporations necessary to achieve them, has come the increased exposure to maladministration, abuse of authority and official insensitivity. And the growth of a distant, impersonal, professionalized structure of government has tended to dehumanize interaction between citizens and those who serve them. See L. Hill, The Model Ombudsman (1976) at pp.4-8.

The traditional controls over the implementation and administration of governmental policies and programs -- namely, the legislature, the executive and the courts -- are neither completely suited nor entirely capable of providing the supervision a burgeoning bureaucracy demands. The inadequacy of legislative response to complaints arising from the day-to-day operation of government is not seriously disputed. The demands on members of legislative bodies is such that they are naturally unable to give careful attention to the workings of the entire bureaucracy. More-

over, they often lack the investigative resources necessary to follow up properly any matter they do elect to pursue. See Powles, Aspects of the Search for Administrative Justice (1966), 9 Can. Pub. Admin. 133 at pp.142-3.

The limitations of courts are also well known. Litigation can be costly and slow. Only the most serious cases of administrative abuse are therefore likely to find their way into the courts. More importantly, there is simply no remedy at law available in a great many cases.

H.W.R. Wade describes this problem and the special role the Ombudsman has come to fill:

> But there is a large residue of grievances which fit into none of the regular legal moulds, but are none the less real. A humane system of government must provide some way of assuaging them, both for the sake of justice and because accumulating discontent is a serious clog on administrative efficiency in a democratic country.
>
> The vital necessity is the impartial investigation of complaints. ... What every form of government needs is some regular and smooth-running mechanism for feeding back the reactions of its disgruntled customers, after impartial assessment, and for correcting whatever may have gone wrong. Nothing of this kind existed in our system before 1968, except in very limited spheres. Yet it is a fundamental need in every system. It was because it filled that need that the device of the ombudsman suddenly attained immense popularity, sweeping

> round the democratic world and taking root in Britain and in many other countries, as well as inspiring a vast literature. (See Wade, Administrative Law (5th Ed.) pp.73-74.)

This problem is also addressed by Professor Donald C. Rowat, in an article entitled "An Ombudsman Scheme for Canada" (28 Can. J. Econ. & Poli. Sc. 543 (1962)):

> It is quite possible nowadays for a citizen's right to be accidentally crushed by the vast juggernaut of the government's administrative machine. In this age of the welfare state, thousands of administrative decisions are made each year by governments or their agencies, many of them by lowly officials; and if some of these decisions are arbitrary or unjustified, there is no easy way for the ordinary citizen to gain redress. (at p.543)

The Ombudsman represents society's response to these problems of potential abuse and of supervision. His unique characteristics render him capable of addressing many of the concerns left untouched by the traditional bureaucratic control devices. He is impartial. His services are free, and available to all. Because he often operates informally, his investigations do not impede the normal processes of government. Most importantly, his powers of investigation can bring to light cases of bureaucratic maladministration that would otherwise pass unnoticed. The

Ombudsman "can bring the lamp of scrutiny to otherwise dark places, even over the resistance of those who would draw the blinds": Re Ombudsman Act (1970), 72 W.W.R. 176 (Alta. S.Ct.) per Milvain, C.J., at pp.192-193. On the other hand, he may find the complaint groundless, not a rare occurrence, in which event his impartial and independent report, absolving the public authority, may well serve to enhance the morale and restore the self-confidence of the public employees impugned.

In short, the powers granted to the Ombudsman allow him to address administrative problems that the courts, the legislature and the executive cannot effectively resolve.

(c) The Legislative Scheme

The Ombudsman is an "officer of the Legislature", Ombudsman Act, subs.2(1), and responsible solely to the Legislative Assembly, to which he must report annually, (subs.30(1)). His term of office is six years (subs.3(1)). He receives the salary of a Supreme Court Judge (subs.4(1)). His duties, simply put, consist of investigating suspected shortcomings in the administration of government, at the request of the legislature

(subs.10(3)), on his own initiative or on the basis of complaints made by members of the public (subs.10(1)).

In order to facilitate his investigative role, the Ombudsman is granted wide powers. Pursuant to s.15, he may, inter alia: enter and inspect premises; require anyone to produce documents or furnish information; summon and examine under oath anyone possessed of relevant information; and conduct hearings. Teeth are given to the Ombudsman's powers by s.31, which prohibits, upon pain of penal sanction, any conduct intended to interfere with an investigation.

The Act does ensure that all sides of any issue are properly aired by affording any affected party the opportunity to be heard. The Ombudsman must give notice of his investigation to any governmental authority he is investigating and to any other appropriate person and he must consult with the authority upon request (s.14). He must give the authority and any other person who may be adversely affected the chance to make either oral or written representations before rendering any report or recommendation (s.16).

It is important to note that the Ombudsman has no power directly to force any governmental authority to

remedy a wrong he uncovers. The Act does, however, create a variety of mechanisms whereby the Ombudsman may move the government to implement any decision he reaches after an investigation. He may recommend corrective action to an authority who must then notify him of what action will be taken, if any, and where no action is planned the reasons why (s.23). If the Ombudsman remains unsatisfied, he may report the matter to the Lieutenant Governor in Council and to the Legislative Assembly (s.24). And he may comment publicly on any case where he deems it appropriate (s.30).

It is these sections that ultimately give persuasive force to the Ombudsman's conclusions: they create the possibility of dialogue between governmental authorities and the Ombudsman; they facilitate legislative oversight of the workings of various government departments and other subordinate bodies; and they allow the Ombudsman to marshal public opinion behind appropriate causes.

Read as a whole, the Ombudsman Act of British Columbia provides an efficient procedure through which complaints may be investigated, bureaucratic errors and abuses brought to light and corrective

action initiated. It represents the paradigm of remedial legislation. It should therefore receive a broad, purposive interpretation consistent with the unique role the Ombudsman is intended to fulfil. There is an abundance of authority to this effect. See, particularly, Re Ombudsman Act supra; Re Ombudsman of Ontario and Health Disciplines Board of Ontario (1979), 104 D.L.R. (3d) 597 (Ont. C.A.); also see Re Ombudsman of Ontario and Minister of Housing of Ontario (1979), 26 O.R. (2d) 434 (H.C.); Re Ombudsman for Saskatchewan (1974), 46 D.L.R. (3d) 452 (Sask.Q.B.); Re Board of Police Commissioners for the City of Saskatoon and Tickell (1979), 95 D.L.R. (3d) 473 (Sask.Q.B.).

(d) Analysis

Pursuant to subs.10(1), earlier quoted, the Ombudsman may conduct an investigation into any complaint which presents the following elements:

1) a decision or recommendation made; an act done or omitted; or a procedure used;

2) by an authority

3) that aggrieves or may aggrieve a person

4) with respect to a matter of administration.

I propose now to examine the meaning of each of these elements and their application to this appeal.

1) A decision or recommendation made; an act done or omitted; or a procedure used

Paragraphs (a), (b) and (c) of subs.10(1) of the Act, given their plain and ordinary meaning, encompass virtually everything a governmental authority could do, or not do, that might aggrieve someone. It is difficult to conceive of conduct that would not be caught by these words.

The actions of B.C.D.C. and First Capital toward King Neptune during the negotiations and, in particular, the failure of B.C.D.C. and First Capital to renew the lease or sell the land to King Neptune, was conceded before the Court of Appeal to be "an act or decision" within the meaning of subs.10(1). At trial, Chief Justice McEachern made a finding to that effect. The appellants, however, contested the proposition before this Court. The relevant words were urged upon us as words of limitation. It was argued that "the event which put King Neptune out of possession, i.e. piry of the lease, is not a 'decision' a 'recommendation', an 'act done or omitted' or a 'procedure

used'". Rather, it was described as the mere fulfillment of a contractual condition accepted by King Neptune long before B.C.D.C. purchased the land.

This argument improperly characterizes the nature of King Neptune's complaint and ignores the long course of negotiations between the parties. King Neptune did not complain to the Ombudsman about the expiry of its lease in isolation. King Neptune sought an investigation of the treatment it received at the hands of B.C.D.C. and First Capital from the time of the purchase of the land by B.C.D.C. until the ultimate expiry of the lease. The complaint, in substance, was one of bad faith on the part of B.C.D.C. and First Capital in negotiating with King Neptune with respect to the latter's future participation in the redevelopped waterfront area.

In my opinion, the complaint calls into question conduct that can be properly described as an act done or omitted, a decision or, at least, a procedure used.

2) An Authority

It is not really open to dispute that B.C.D.C. is an "authority" as described in the Schedule to the Act. The list of authorities includes:

> 2. A person, corporation, commission, board, bureau or authority who is or the majority of the members of which are, or the majority of the members of the board of management or board of directors of which are:
>
> (a) appointed by an Act, minister, the Lieutenant Governor in Council;
>
> (b) in the discharge of their duties, public officers or servants of the Province; or
>
> (c) responsible to the Province.

B.C.D.C. is clearly an authority because, as I have indicated, its directors are appointed by the Lieutenant Governor in Council pursuant to s.7 of the Development Corporation Act.

The characterization of First Capital as an authority is superficially more problematic, having regard to the basis upon which the case was argued in the courts of British Columbia. In the opinion of the chambers judge, no distinction needed to be drawn between B.C.D.C. and First Capital. For the purposes of this analysis he treated the two complaints as though only one had been filed and the two corporations were one; this was also the way the case was presented to the Court of Appeal. In my opinion, that Court correctly accepted this view of the case.

Were it necessary, however, I would have no difficulty in concluding that First Capital is "a corporation ... responsible to the Province" within the meaning of item 2(c) of the Schedule, as a wholly-owned subsidiary of B.C.D.C. Even in the absence of such a finding, I would have the gravest doubts that a subsidiary, such as First Capital, could lie outside the purview of the Act when it is controlled by an authority that is itself subject to the jurisdiction of the Ombudsman.

This is a convenient point to pause and consider specifically the oral argument before this Court. The appellants, as I understood them, sought to draw a decisive distinction between what they decribed as the first complaint, against First Capital, alleging bad faith in bargaining with respect to relocation of the restaurant, and the second complaint, against B.C.D.C., for failure to renew the lease or sell the land. It was contended that the proceedings to date have been only in respect of the second complaint, and if the investigation were limited to that complaint the Ombudsman would be acting in excess of jurisdiction.

The appellants raise in this argument the two points I have just covered under parts (d)(1) and (d)(2) above. In effect, they urge that the complaint does not call into question any conduct on behalf of a body which could be described as an act or decision taken by an authority. In a rather narrow and technical fashion, if I may say so, they attempt to draw a firm line between B.C.D.C. and First Capital and then ascribe certain conduct to one company as distinct from the other.

The petition by which the case was commenced was brought in the name of B.C.D.C. and First Capital. Equally, the appellants admitted before the Court of Appeal that the actions of both companies, between which no distinction was drawn, would be within the power of the Ombudsman to investigate, if the other requirements of subs.10(1) were fulfilled. The prior development of the case therefore seems inconsistent with the distinction the appellants now press upon us. Moreover, no such distinction was made in the factum filed by the appellants in this Court.

Read separately or together, the two complaints alleged bad faith on the part of B.C.D.C and its

wholly-owned subsidiary in the conduct of negotiations over the lease or sale of certain lands. These negotiations and the actions of B.C.D.C. and First Capital made up part and parcel of a single transaction. There is no warrant for carving up this transation in the manner urged by appellants. The distinction for which they contend would result in an unrealistic characterization of the events which have occurred and of the relationship between the two companies and King Neptune.

3) A Person Aggrieved

Only the conduct of an authority which "aggrieves or may aggrieve a person" is subject to investigation by the Ombudsman. It was argued that King Neptune is not a person and, in any event, was not aggrieved within the meaning of the Act.

I will not pause long to consider the argument of the Attorney General of British Columbia that the word "person" in subs.10(1) does not include "corporations", like King Neptune. The Interpretation Act, R.S.B.C. 1979, c.206, s.29 provides that "[i]n an enactment ... 'person' includes a corporation". There is nothing in the Ombudsman Act inconsistent with this provision.

Moreover, as a matter of policy, there is no reason to opt for the narrower meaning. Corporations, after all, are merely the vehicles through which natural persons pursue economic goals. When a corporation is treated unfairly or denied something to which it has a right, the effects are felt by people. Denying standing to corporations would result in some injustices to people going unexamined and possibly unredressed, whether those people are shareholders or, as here, long term employees who stood to lose their jobs if King Neptune's restaurant closed.

The Attorney General of British Columbia advanced the rather strained argument that because corporations may not vote they may not apply to the Ombudsman for redress of their grievances, on the theory that the Legislature represents people, not corporations, and the Ombudsman represents the Legislature. I see no connection whatever between the right to vote and the right to seek the Ombudsman's assistance. For example, a person who has been convicted of an indictable offence and is still serving the sentence imposed may not vote (Election Act, R.S.B.C. 1979, c.103, para. 3(1)(b)), yet subs.12(3) of the Ombudsman Act clearly

contemplates that such a person may make a complaint to the Ombudsman. The argument that a corporation is not a person within the meaning of subs.10(1) is without merit.

On the second point, the appellants and the Attorney General of British Columbia contend that the phrase "agrieves or may aggrieve", as used in subs.10(1), is a term of art intended to describe the denial or potential denial of a legal right; to be aggrieved a person must have been deprived of, or denied something, to which he was entitled by law. They argue that since King Neptune had no right to purchase the land upon which the restaurant stood, or to compel the renewal of the lease, it cannot be said to have been aggrieved by its inability to do so.

The appellants cite Ex Parte Sidebotham, in re Sidebotham (1880), 14 Ch.D. 458 (C.A.) and Re Yulka et al. and Minister of Social Services (1982), 138 D.L.R. (3d) 574. (Sask. Q.B.). On the other side, the Ombudsman and the Attorney General of Ontario cite Arsenal Football Club v. Smith (1977), 2 W.L.R. 974 (H.L.); Re

v. Summer Village of Sundance Beach (1980), 1 W.W.R. 97 (Alta. Q.B.); and Attorney General of the Gambia v. N'Jie, [1961] 2 All E.R. 504 (P.C.).

I find these authorities inconclusive. Although each dealt with the meaning of the phrase "person aggrieved", none dealt with a statute remotely resembling the one at bar. Our understanding of subs.10(1) of the Ombudsman Act is not likely to be furthered by reference to different statutes containing differently worded sections dealing with different subject matters. The issue can only be resolved by an analysis of the legislation before us in this particular case and the purpose that legislation is designed to achieve.

That the Ombudsman's powers of investigation and reporting were meant to extend beyond those cases in which the complaining party asserts a cause of action is evident from s.22 of the Ombudsman Act, which speaks of determinations by the Ombudsman that something the government did was "unjust", "oppressive" "based in whole or in part on a mistake", brought about through "arbitrary, unreasonable, or unfair procedures", or "otherwise wrong". This section also provides that in

such cases the Ombudsman "shall report his opinion and the reasons for it to the authority and may make the recommendation he considers appropriate". This makes clear the intent of the legislature not to confine the Ombudsman to investigating governmental acts that "aggrieve" a person in the narrow sense argued for by the appellants.

Secondly, the appellants offer no principled justification for limiting the meaning of "aggrieves" to the infringement of a legal right. The absence of such justification is not surprising since it was, at least in part, the lack of any remedy at law for many administrative injustices that gave rise to the creation of the office of Ombudsman. The courts, not Ombudsmen, have responsibility for remedying violations of legal rights. As counsel for the Ombudsman of Ontario submits, "the purpose of the Ombudsman Act, inter alia, is to create someone who can investigate actions which prejudice someone's interest even if those actions fall short of violating the strict legal rights which a court protects". To interpret the phrase "aggrieves or may aggrieve" in the manner urged by the appellants would run counter to the legislature's clear intention

to provide redress for grievances not legally cognizable.

I would hold that a party is aggrieved or may be aggrieved whenever he genuinely suffers, or is seriously threatened with, any form of harm prejudicial to his interests, whether or not a legal right is called into question. In this case, it is quite clear that the loss of the waterfront location for the restaurant could cause harm prejudicial to the interests of King Neptune and therefore the King Neptune might be aggrieved by the conduct of B.C.D.C. and First Capital.

(4) A Matter of Administration

As I have said, for a complaint to fall within the Ombudsman's jurisdiction it must be "with respect to a matter of administration". The appellants and their supporting intervenor contend that their dealings with King Neptune were not matters of administration, but rather, business dealings and therefore not subject to the Act. With respect, I cannot agree.

The words "administration" or "administrative" everywhere qualify the Ombudsman's jurisdiction. In the Act under consideration, and in the Ombudsman Acts of Alberta, Saskatchewan, Manitoba and Newfoundland,

the relevant phrase is "a matter of administration". Ombudsman Act, R.S.A. 1980, c.O-7, subs.11(1); Ombudsman Act, R.S.S. 1978, c.O-4, subs.12(1); Ombudsman Act, R.S.M. 1970, c.045, s.15; Parliamentary Commissioner (Ombudsman) Act, R.S.N. 1970, c.285, subs.14(1). In New Brunswick and Nova Scotia, the jurisdictional words are "the administration of any law": Ombudsman Act, R.S.N.B. 1973, c.O-5, subs.12(1); Ombudsman Act, S.N.S. 1970-71, c.3, subs.11(1). In Ontario, the Ombudsman Act speaks of "the administration of a governmental organization": Ombudsman Act, R.S.O. 1980, c.325, subs.15(1). And in Quebec the pertinent language is "the exercise of an administrative function": Public Protector Act, R.S.Q. 1977, c.P-32, s.13.

There is nothing in the words administration or administrative which excludes the proprietary or business decisions of governmental organizations. On the contrary, the words are fully broad enough to encompass all conduct engaged in by a governmental authority in furtherance of governmental policy -- business or otherwise. A brief reference to accepted interpretations of the term will make this clear.

S.A. de Smith, Judicial Review of Administrative Action (4th Ed. 1980) at pp.68-71, says:

> The functions of public authorities may be roughly classified as (i) legislative, (ii) administrative (or executive), (iii) judicial (or quasi-judicial) and (iv) ministerial ...
>
> ...
>
> ... [A]n administrative act cannot be exactly defined, but it includes the adoption of a policy, the making and issue of a specific direction, and the application of a general rule to a particular case in accordance with the requirements of policy or expediency or administrative practice.

In 1 Halsbury's Laws of England, 4th ed., para.4, under the title Administrative Law, it is written:

> The functions of government are classified as legislative; executive or administrative; judicial; and ministerial ... [E]xecutive and administrative acts entail the formulation or application of general policy in relation to particular situations or cases, or the making or execution of individual discretionary decisions ...

Neither of these interpretations excludes governmental conduct in the proprietary or business sphere. The touchstone of administrative action, according to the above definitions, is the government's adoption, formulation or application of general public policy in particular situations. There is no caveat

that the policy in question be divorced from proprietary, commercial or business matters.

A transaction can thus be characterized as a matter of administration even though it carries a business flavour. Indeed, a bewildering array of governmental authorities now regularly implement governmental policies and programs in the marketplace. The decisions made by the government's agents in these areas are no less administrative merely because the policies they implement are tied to some greater or lesser extent to business concerns.

I find support for this view in the judgment of the Ontario Court of Appeal in Re Ombudsman of Ontario and Health Disciplines Board of Ontario et al, supra. The issue in that case concerned the extent of the Ontario Ombudsman's jurisdiction. The word under consideration was administrative. Morden J.A. said, at p.608:

> ... it is reasonable to interpret "administrative" as describing those functions of Government which are not performed by the Legislative Assembly and the Courts. Broadly speaking, it describes that part of Government which administers the law and governmental policy.

In accord are Booth v. Dillon (No. 3), [1977] V.R. 143 (S.C.), at p.144; Glenister v. Dillon, [1976] V.R. 550 (S.C.), at p.558.

That the British Columbia Legislature intended the Ombudsman to have investigative authority over the commercial activities of Crown corporations such as the appellants is evidenced by the Schedule to the Ombudsman Act, which defines certain Crown corporations as authorities for the purposes of s.10. The inclusion of these Crown corporations in the definition of "authorities" suggests that the legislature expected the Ombudsman to oversee their operations. Such operations, for many of these Crown corporations, consist almost entirely of business decisions of the type sought to be insulated here from the Ombudsman's scrutiny.

I do not think it necessary to consider certain dicta in the judgment of the Appellate Division of the Supreme Court of Nova Scotia in Ombudsman of Nova Scotia v. Sydney Steel Corporation, et al (1977), 17 N.S.R. (2d) 361. In this case, relied on by McEachern, C.J. at trial, it was held that the Nova Scotia Ombudsman did not have jurisdiction to investigate a complaint against Sydney Steel, a Crown corporation.

Under the Nova Scotia Act, the Ombudsman is confined to investigating the "administration, by a department ... of any law of the Province." The Nova Scotia court concluded that the corporation, whose sole function was to make and sell steel, did not administer any laws of the Province. Because of the particular language of the statute there involved, the court was not required to, and did not, pass on the question whether the corporation was administering government policy. The holding in Sydney Steel does not, therefore, have any bearing on the analysis set forth above or the case at bar.

In this context, I would like to refer to one passage from the judgment of Anderson J.A. in the instant case, namely:

> In the case on appeal, the acquisition of land was for the purposes of the river front development scheme. B.C.D.C. was performing a governmental public function in the public interest in accordance with its objects and powers, as provided for in sections 4 and 4.1 of the Development Corporation Act. It was not engaged in a commercial enterprise but in a programme designed to implement government policy.

With respect, I would have thought that B.C.D.C. was engaged in both a commercial enterprise and in a pro-

gramme designed to implement government policy. But for the reasons just expressed, I do not believe the fact that an authority, as defined, is engaged in a commercial activity screens it from the gaze of the Ombudsman.

The appellants and their supporting intervenor maintain that sound policy considerations demand that this Court give a restrictive reading to the phrase "a matter of administration" in the British Columbia Ombudsman Act.

First, they argue that the "formidable powers of investigation" given to the Ombudsman by the Act militate strongly against extending the Ombudsman's jurisdiction to disputes stemming from commercial arrangements. This argument influenced the chambers judge. He said:

> It just cannot be the case, in my view, that the Legislature intended every business decision made by an authority should be subject to investigation. If that were so, no authority could function in any competitive market, particularly in the real estate development field and no development corporation could ever satisfy lenders that a safe investment could be made ...

A similar view is reflected in the reasons for judgment of McFarlane J.A., dissenting in the Court of Appeal.

With respect, this argument misconceives the reach of the Ombudsman's investigative powers. The Ombudsman's powers, far from being formidable, are in reality quite limited. The Ombudsman may only investigate, recommend and publicize. His recommendations are binding on no one; he has no power to overrule the decisions of government officials. Nor can he bring a punitive action for official malfeasance. Clearly, he cannot impede the functioning of those with whom he deals.

In my view, the phrase "a matter of administration" encompasses everything done by governmental authorities in the implementation of government policy. I would exclude only the activities of the legislature and the courts from the Ombudsman's scrutiny.

Turning to the facts of the instant case, it is clear that B.C.D.C. and First Capital were engaged in the administration and implementation of policies of the Government of British Columbia when they dealt with King Neptune. As I have earlier indicated, the corporate objects of B.C.D.C. are wide and include: (1) creating and increasing economic benefits for the Province of British Columbia "by encouraging and assis-

ting in the establishment, expansion and continued operation of industrial enterprises in the Province"; and (2) "act[ing] as agent for, and provid[ing] assistance to, the government in the administration or implementation of government programs". Development Corporation Act, R.S.B.C. 1979, c.93, ss.4, 4.1 (emphasis added).

The government program being administered by B.C.D.C. was a municipal redevelopment project approved by the Minister of Municipal Affairs and authorized by the legislature in the New Westminster ReDevelopment Act 1979, S.B.C. 1979, c.36. It called for First Capital to acquire "title or other method of control" over the land in the New Westminster waterfront area and oversee its development in accordance with the statutorily authorized redevelopment plan. B.C.D.C. and First Capital, in dealing with the land in question, were thus implementing governmental policy and administering a governmental program. B.C.D.C.'s acquisition on behalf of First Capital of the land on which King Neptune's restaurant stood, and its consequent refusal to renew King Neptune's lease, were part and parcel of its administration of the project. It

follows that King Neptune's complaints regarding the manner in which the two corporations dealt with it regarding the land and the location of the restaurant were, in spite of their commercial flavour, "with respect to a matter of administration", as that phrase is used in subs.10(1) of the Ombudsman Act.

V Conclusion

In my view, the respondent Ombudsman possessed jurisdiction to investigate the complaints made by King Neptune against B.C.D.C. and First Capital.

I would dismiss the appeal with costs to the respondent Ombudsman in all courts. There should be no costs payable by the Attorney General of British Columbia. There should be no costs payable to any of the intervenors.

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